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APPLICATION NO.	FILING DATE	FIRST NAMED IN	PENTOR		
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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

1- File Copy PTO-90C (Rev. 2/95)

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Art Unit: 1635

DETAILED ACTION

Double Patenting

1. Claims 255, 257 and 259 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 245-247 of copending Application No. 08/978,635, for the same reasons of record set forth in the Official action mailed 02/18/99.

This is a <u>provisional</u> obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Acknowledgment is made of the intention to wait for allowable subject matter in one or both applications before further responding to the double patenting rejection in the reponse filed 08/23/99.

Claim Rejections - 35 USC § 112

2. Claims 245-260 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention, for the same reasons of record set forth in the Official action mailed 02/18/99.

Applicant's arguments filed 8/23/99 have been fully considered but they are not persuasive.

Art Unit: 1635

Applicant's response provides only an assertion that an ordinarily skilled artisan, armed with the specification, could practice the invention without undue experimentation. This assertion, without any supporting evidence, fails to overcome the *prima facie* case of lack of enablement.

3. Claims 245-260 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention, for the same reasons of record set forth in the Official action mailed 02/18/99.

Applicant's arguments filed 8/23/99 have been fully considered but they are not persuasive. Applicant's response provides only an assertion that the instant claims are of proper breadth and scope to convey to one skilled in the art that the inventors had possession of the claimed invention. This assertion, without any supporting evidence, fails to overcome the lack of written description in the specification as filed for the broad genus of possible constructs claimed.

Claim Rejections - 35 USC § 102

4. Claims 245-249 and 253 rejected under 35 U.S.C. 102(e) as being anticipated by Saito et al., for the same reasons of record set forth in the Official action mailed 02/18/99.

Applicant's arguments filed 8/23/99 have been fully considered but they are not persuasive.

Art Unit: 1635

Applicant does not address how Saito does not teach nor suggest the claimed invention and thus fails to overcome the rejection.

5. Claims 245-247 and 249-254 rejected under 35 U.S.C. 102(e) as being anticipated by Wagner et al., for the same reasons of record set forth in the Official action mailed 02/18/99.

Applicant's arguments filed 8/23/99 have been fully considered but they are not persuasive. Applicant does not suggest how the material elements taught by Wagner et al. do not share material identity with the scope of possible constructs instantly claimed.

6. Claims 255-260 are rejected under 35 U.S.C. 102(e) as being anticipated by Sullenger et al., for the same reasons of record set forth in the Official action mailed 02/18/99.

Applicant's arguments filed 8/23/99 have been fully considered but they are not persuasive. Applicant does not suggest how the material elements taught by Sullenger et al. do not share material identity with the scope of possible constructs instantly claimed.

7. Claims 255-260 are rejected under 35 U.S.C. 102(b) as being anticipated by DeYoung et al., for the same reasons of record set forth in the Official action mailed 02/18/99.

Applicant's arguments filed 8/23/99 have been fully considered but they are not persuasive. Applicant's response provides only an assertion that DeYoung et al. fails to anticipate the

Art Unit: 1635

disclosed invention. This assertion, without any supporting evidence, fails to overcome the rejection.

Claim Rejections - 35 USC § 103

8. Claims 245-260 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Young et al. In view of Karn et al., Wagner et al., Curiel et al, and Zaia et al., for the same reasons of record set forth in the Official action mailed 02/18/99.

Applicant's arguments filed 8/23/99 have been fully considered but they are not persuasive in view of the failure to overcome the rejections over De Young et al. and Wagner et al. above and since the assertion by applicant that the combination of references would not have made the claimed invention obvious to one of ordinary skill in the art. This assertion, without any supporting evidence, fails to overcome the *prima facie* case of obviousness.

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

Art Unit: 1635

MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date

of this final action.

Any inquiry concerning this communication or earlier communications from the examiner

should be directed to Mary M. Schmidt, whose telephone number is (703) 308-4471.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, George Elliott, Ph.D. may be reached at (703) 308-4003.

Any inquiry of a general nature or relating to the status of this application should be

directed to the Group receptionist whose telephone number is (703) 308-0196.

Thongs C. Elliott George C. Ellion, Ph.D. Supervisory Patent Examine Technology Center 1600

M. M. Schmidt

November 8, 1999